

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3390 of 1986

Date of decision: 10-2-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPIKABEN R PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/02/98

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

Challenge has been made by the petitioner to the order dated 5-7-1984 under which the services of the petitioner were terminated. On 1-12-1983 the petitioner was given temporary appointment on the post of clerk/typist for 29 days. Thereafter it appears that the 29 days' appointment has been extended from time to time, which was ultimately brought to an end on 5-7-1984. Challenge has been made by the learned counsel for the petitioner to this order on the ground that person junior to the petitioner has been retained in service whereas the petitioner who was senior has been asked to go home. In support of his contention learned counsel for the petitioner placed reliance on the decision of Supreme Court in the case of State of Gujarat vs. Patel Shankerlal Bhabhaidas, reported in 1987 (1) GLR 192; and in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat, reported in 1995(2) GLH 228. This contention has been raised on the basis of the provisions of Industrial Disputes Act, 1947 as it transpires from the contents of para 5 of the special civil application.

2. From the reply of the respondents I find that on the availability of surplus persons from the office of the District Collector, services of the petitioner has been terminated. So far as the grievance of the petitioner that junior person has been retained in service is concerned, the respondents have given out that the other lady was considered to be more suitable and therefore she was retained in service. So it is not the case where the question of retention of junior person has not been considered; but after consideration of comparative suitability of the petitioner and the other lady, namely, Bhagavatiben, the said lady has been retained in service. It is always open to the respondents to retain in service a junior, if the junior was found more suitable for the job. Otherwise also, Bhagavatiben has not been impleaded as party to this special civil application. In her absence, it is not proper to go into all these questions. If this contention of the learned counsel for the petitioner is accepted and the petitioner is ordered to be reinstated in service, then the rights accrued to the other lady might be adversely affect. Normally in absence of the other person it is difficult for this court to go into the question of examining the correctness or otherwise of the action of the respondents in retaining her in service.

3. Yet there is another reason for justifying the

dismissal of this special civil application. The petitioner was appointed on temporary basis for fixed term. So it is a temporary appointment for fixed period, and as such it will not give any right to the petitioner to continue on the post. Such appointment comes to an end automatically on expiry of the period for which it was made. No notice is required to be given, nor any order is necessary. In the present case, however, care has been taken by the respondents to pass order of termination of services of the petitioner. A temporary Government servant has no right to hold the post, and his services can be brought to an end at any time even without any notice or affording any opportunity of hearing. In this respect, reference may have to be made to the decision of the Supreme Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd., vs. Devendra Kumar Jain, reported in JT 1995 (1) SC 198. The apex court in that case held that temporary Government servant does not become permanent unless he acquires that capacity by force of any rule or is declared as permanent servant. Reference may also have to be made to another decision of this court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat, reported in 1995(2) GLH 228. Much emphasis has been laid by the learned counsel for the petitioner on the question of principle of 'first come last go' to be followed in the matter of termination of service of the petitioner. Suffice it to say that this principle of 'first come last go' is a principle applied in the law relating to industrial disputes, for which the proper remedy of the petitioner would have been to raise industrial dispute and not by approaching this court under Article 226 of the Constitution of India.

4. The petitioner was given fixed term appointment on temporary availability of the job. When surplus employees were made available, then temporary employees had to make room for those persons and in that eventuality to accommodate the surplus employees, services of temporary employees could have been terminated. So admittedly the petitioner's services were terminated on the ground that surplus employees were made available and as such no exception could have been taken to the action of the respondents in terminating her services.

5. There is yet another reason for which no relief can be granted to the petitioner. The services of the petitioner were terminated on 5th July, 1984 and this petition has been filed by the petitioner before this court on 1st July, 1986, that is, after about two years from the date of termination of her services. This delay

of two years in approaching this court against termination of her services is fatal to the claim of the petitioner. Attempt has been made by the petitioner to explain the delay by stating that she made personal as well as written representations to the respondents to take her back in service. But nothing has been produced on record of the special civil application in support of this averment. So far as personal approach is concerned, it is very easy to state. Though the petitioner has stated that she had made representation, there is no evidence on record of this special civil application.

6. The petitioner, after termination of her services got job in the office of the Employment Exchange, Surat from 29th July, 1984. It appears that her services were terminated from that office also. Then she thought of challenging this termination. So from the facts stated above, the delay in filing the special civil application is certainly fatal to the petitioner's claim made in this special civil application. The matter does not end here. The petitioner has applied to the respondent Corporation for appointment on the post of Assistant / Depot Manager. She was called for interview, but she was not selected for the said post. That happened in the year 1985, and when she was not selected for that post, it appears to be another reason for her to challenge her earlier termination by filing this special civil application.

7. Taking into consideration the totality of the facts of this case, the special civil application is without any substance and the same is dismissed. Rule discharged. No order as to costs.

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